



Office of the Clerk
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
The James R. Browning Courthouse
95 Seventh Street
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San Francisco, California 94119-3939



Cathy A. Catterson
Clerk of Court

(415) 556-9800

September 20, 2006

Notice and Opportunity for Comment on Proposed Amendments to the Circuit Rules

Pursuant to 28 U.S.C. § 2071(b), comments are invited on proposed amendments to the Circuit Rules.

- Circuit Rule 21-5 Petition for Writ of Mandamus
- Circuit Rule 36-3 Citation of Unpublished Dispositions or Orders

New and/or amended language is bold and highlighted. Comments should be submitted to Cathy A. Catterson, Clerk of Court/Circuit Court Executive, no later than **October 20, 2006**.

CIRCUIT RULE 36-3

CITATION OF UNPUBLISHED DISPOSITIONS OR ORDERS

- (a) **Not Precedent:** Unpublished dispositions and orders of this Court are not **binding** precedent, except when relevant under the doctrine of law of the case, res judicata, and collateral estoppel.
- (b) **Citation of Unpublished Dispositions and Orders Issued on or after January 1, 2007:** Unpublished dispositions and orders of this Court issued on or after January 1, 2007 may be cited to the courts of this circuit in accordance with Fed. R. App. P. 32.1.
- (c) Citation: **of Unpublished Dispositions and Orders of this Court Issued before January 1, 2007:** Unpublished dispositions and orders of this Court **issued before January 1, 2007** may not be cited to **or by** the courts of this circuit, except in the following circumstances.
- (i) They may be cited to this Court or to or by any other court in this circuit when relevant under the doctrine of law of the case, res judicata, or collateral estoppel.

- (ii) They may be cited to this Court or by any other courts in this circuit for factual purposes, such as to show double jeopardy, sanctionable conduct, notice, entitlement to attorneys' fees, or the existence of a related case.
- (iii) They may be cited to this Court in a request to publish a disposition or order made pursuant to Circuit Rule 36-4, or in a petition for panel rehearing or rehearing en banc, in order to demonstrate the existence of a conflict among opinions, dispositions, or orders.
- (d) ~~**Attach Copy:** A copy of any cited unpublished disposition or order must be attached to the document in which it is cited, as an appendix. (New Rule 7/1/2000)~~

CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 36-3

Please note that Circuit Rule 36-3 has been adopted for another limited 30-month period, beginning January 1, 2003 and ending July 1, 2005. (Rev. 01-01-2003)

Purpose of Amendment: To effectuate the local option set forth in Fed. R. App. P. 32.1 regarding citation of pre-January 1, 2007 unpublished dispositions and orders. Requirement to append material abrogated as duplicative of provisions of Rule 32.1.

CIRCUIT RULE 21-5 NEW

**PETITION FOR WRIT OF MANDAMUS
PURSUANT TO 18 U.S.C. § 3771(d)(3)**

A petition for writ of mandamus filed pursuant to 18 U.S.C. § 3771(d)(3) shall bear the caption “PETITION FOR WRIT OF MANDAMUS PURSUANT TO 18 U.S.C. § 3771(d)(3).” Before filing such a petition, the petitioner’s counsel, or the petitioner if appearing pro se, must notify the motions unit of the Court of Appeals that such a petition will be filed, and must make arrangements for the filing and immediate service of the petition on the relevant parties. Such notification must be by telephone (415/556-9890 or 9800). The real party in interest must telephonically notify the court when it becomes aware of the filing of the petition.

***CIRCUIT ADVISORY COMMITTEE
NOTE TO RULES 21-5***

A failure to notify this court ahead of time that such a filing is being made will adversely affect this court’s ability to decide any such petition within 72 hours of filing as contemplated by the statute.

Cross Reference: Ninth Circuit Rule 27-3.

Purpose of Amendment: To facilitate treatment of petitions filed pursuant to the cited statute.
